

determining whether an individual is without fault, the *fault* of the overpaid person and the *fault* of the individual seeking relief under the waiver provision are considered. Whether an individual is *without fault* depends on all the pertinent circumstances surrounding the overpayment in the particular case. The Social Security Administration considers the individual's understanding of the reporting requirements, the agreement to report events affecting payments, knowledge of the occurrence of events that should have been reported, efforts to comply with the reporting requirements, opportunities to comply with the reporting requirements, understanding of the obligation to return checks which were not due, and ability to comply with the reporting requirements (e.g., age, comprehension, memory, physical and mental condition). In determining whether an individual is without fault based on a consideration of these factors, the Social Security Administration will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual may have. Although the finding depends on all of the circumstances in the particular case, an individual will be found to have been at fault in connection with an overpayment when an incorrect payment resulted from one of the following:

(a) Failure to furnish information which the individual knew or should have known was material;

(b) An incorrect statement made by the individual which he knew or should have known was incorrect (this includes the individual's furnishing his opinion or conclusion when he was asked for facts), or

(c) The individual did not return a payment which he knew or could have been expected to know was incorrect.

[40 FR 47763, Oct. 10, 1975, as amended at 59 FR 1636, Jan. 12, 1994]

**§ 416.553 Waiver of adjustment or recovery—defeat the purpose of the supplemental security income program.**

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being consid-

ered is without fault (as defined in § 416.552) and adjustment or recovery of the overpayment would defeat the purpose of the supplemental security income program.

(a) *General rule.* We consider adjustment or recovery of an overpayment to defeat the purpose of the supplemental security income (SSI) program if the individual's income and resources are needed for ordinary and necessary living expenses under the criteria set out in § 404.508(a) of this chapter

(b) *Alternative criteria for individuals currently eligible for SSI benefits.* We consider an individual or couple currently eligible for SSI benefits to have met the test in paragraph (a) of this section if the individual's or couple's current monthly income (that is, the income upon which the individual's or couple's eligibility for the current month is determined) does not exceed—

(1) The applicable Federal monthly benefit rate for the month in which the determination of waiver is made (see subpart D of this part); plus

(2) The \$20 monthly general income exclusion described in §§ 416.1112(c)(3) and 416.1124(c)(10); plus

(3) The monthly earned income exclusion described in § 416.1112(c)(4); plus

(4) The applicable State supplementary payment, if any (see subpart T of this part) for the month in which determination of waiver is made.

For those SSI recipients whose income exceeds these criteria, we follow the general rule in paragraph (a) of this section.

[45 FR 72649, Nov. 3, 1980, as amended at 50 FR 48573, Nov. 26, 1985]

**§ 416.554 Waiver of adjustment or recovery—against equity and good conscience.**

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being considered is without fault (as defined in § 416.552) and adjustment or recovery would be *against equity and good conscience*. Adjustment or recovery is considered to be *against equity and good conscience* if an individual changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that payment